

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4648 of 1987

with

SPECIAL CIVIL APPLICATION NO.6123 OF 1987

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SCA.4648/1987

BHARAT PETROLEUM CORPORATION LTD

Versus

SHIV RAJA PARMAR

SCA6123/1987

SHIV RAJA PARMAR

Versus

BHARAT PETROLEUM CORPORATION LTD

Appearance:

1. Special Civil Application No. 4648 of 1987
Mr.D.J. Shukla for NANA VATI & NANA VATI for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2
2. Special Civil Application No. 6123 of 1987

MR MUKESH H RATHOD for petitioner.

Mr.D.J. Shukla for NANA VATI & NANA VATI for respondent.

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 19/08/2004

ORAL JUDGEMENT

1.1 These two cross petitions, namely, Special Civil Application no.4648 of 1987 is preferred by the management-Bharat Petroleum Corporation while Special Civil Application no.6132 of 1987 is preferred by the workman against the same judgment and award passed by the Labour Court, Rajkot dated 11-6-1987 in Reference LCR 315 of 1982 whereby the Labour Court exercising powers under Section 11A of the Industrial Disputes Act, ordered reinstatement of the workman with continuity of service for the purpose of seniority and retirement benefits only but without back wages and all other benefits including increments during the period of enforced idleness.

1.2 Since both the petitions arise from the same judgment, they are heard together and are being disposed of by this common judgment.

2.1 In Special Civil Application no.4648 of 1987 the petitioner-Management has prayed for a direction quashing and setting aside the judgment and award of the Labour Court. In Special Civil Application no.6123 of 1987 the petitioner workman has prayed for a direction to the respondent-Management to pay full back wages of interim period from 6-11-1981 till the date of reinstatement i.e. 1-9-1987. It may be noted that pending this petition workman has attained the age of superannuation.

3.1 It is the case of the petitioner-Management of Special Civil Application no.4648/1987 that the respondent no.1-workman was employed as a gauger with the Management and on 18th February, 1980, the respondent-workman was assigned some work at the tank lorry filling shed to which the respondent workman refused.

3.2 On the next day on February 19,1980 the respondent workman lodged a complaint with the police authorities which resulted into Criminal Case no.764 of 1980. Ultimately, Mr. Agrawal the departmental Head of the Management came to be acquitted by order dated

4-12-1980 passed by the Judicial Magistrate, F.C., Gandhidham. Thereafter, a departmental enquiry was held against the respondent-workman on the charge of misconduct for wilful disobedience of the order of his superior and the respondent-workman having been found guilty was dismissed from service on 6-11-1981. The respondent-workman raised industrial dispute against the said order of dismissal.

3.3 The Labour Court after appreciating the evidence on record arrived at a finding that the workman has been working since 24 years, he has been promoted since one and a half years prior to the incident and as only a solitary incident is shown by the Management it is not proper to snatch the bread and butter of the workman for misconduct though proved against him. The Labour Court also held that it is highly improper on the part of the workman to file false complaint against his superior. Ultimately, the Labour Court ordered reinstatement of the respondent-workman with continuity of service as stated in paragraph 1 of this judgment, and hence Special Civil Application no.4648 of 1987.

4.1 In Special Civil Application no.6123 of 1987 it is the case of the petitioner-workman that he was working as a gauger for more than 26 years; that the petitioner was dismissed from service in view of the show cause notice dated 14-4-1981 and the subsequent departmental enquiry held by the management against him for the alleged misconduct after dismissal of criminal case. The said dismissal order was challenged by the petitioner in the Labour Court, Rajkot and ultimately the Labour Court ordered reinstatement of the petitioner-workman with continuity of service but without back wages of interim period. It is averred in this petition that the part of the order of the Labour Court denying the back wages for the interim period from 6-11-1981 to 1-9-1987 is bad in law, and hence, Special Civil Application no.6123 of 1987.

5.1 Mr. Shukla, learned Counsel for the petitioner of Special Civil Application no.4648/1987 (hereinafter referred to as the "Management") has submitted that the respondent workman had filed a false complaint against the departmental Head of the Management and an acquittal order came to be passed by judgment and order dated 4th December, 1980 by the learned Judicial Magistrate, First Class, Gandhidham, and thereafter, after issuing a show cause notice to the first respondent a domestic enquiry was held against the respondent-workman on the charge of misconduct for wilful disobedience of the order of his

superior and the respondent-workman having been found guilty was dismissed from service on 6-11-1981.

5.2 The respondent-workman raised industrial dispute against the said order of dismissal. The Labour Court after appreciating the evidence on record arrived at a finding that the workman has been working since 24 years, he has been promoted since one and a half years prior to the incident and as only a solitary incident is shown by the Management, it is not proper to snatch the bread and butter of the workman for misconduct though proved against him.

5.3 The Labour Court also held that it is highly improper on the part of the workman to file false complaint against his superior. According to Mr. Shukla despite having observed as above, it was surprising that the Labour Court ordered reinstatement of the petitioner. He submitted that the Labour Court has completely misconstrued the provisions of Section 11A of the I.D. Act inasmuch as it is only when the Labour Court is satisfied that the order of dismissal is not justified that the Labour Court can set aside the dismissal order.

6.1 In support of his submissions, Mr. Shukla has relied on the decision rendered by the Division Bench of this Court in the case of MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD V. HUSAINMIYA CHANDMIYA, reported in 1986(2) G.L.R. 1143 wherein at paragraph 5, it has been observed as under:

"Under Section 11-A, the Labour Court can exercise jurisdictionally if the termination of service is found to be 'not justified' but the order of termination cannot be substituted by a lesser punishment only on the basis of misplaced sympathy. A workman of the type before us has forfeited his right for sympathy because he has duped less fortunate persons of their hard-earned money. Lip sympathy or expression of regret is no substitute for what he pocketed by practising fraud on innocent victims. The Labour Court had clearly transgressed the discretionary jurisdiction vested in it by sec.11-A of the Act by ordering reinstatement of the workmen. We are, therefore, of the opinion that the order passed by the Labour Court is clearly arbitrary and whimsical and cannot be sustained."

This case does not apply to the facts of the present case inasmuch as in the present case, the inquiry was started for alleged misconduct after period of 10

months or so, over and above, after disposal of criminal case.

6.2 Mr. Shukla has next relied on the decision rendered by the learned Single Judge of this Court in the case of CENTRAL BANK OF INDIA v. MAVJI C. LAKUM reported in 2002(3) G.L.H. 199 wherein at paragraph 5.1, it has been observed as under:

"5.1 Again this Court in the case of Rajkot Municipal Corporation v. Navincghabndra I. Vyas reported in 1997(2) G.L.H at page 331 dealt with provisions of Section 11-A of the Act, wherein this Court categorically said that power of the Labour Court to interfere with the penalty is not unguided and the same has to be exercised judicially and not on the basis of theory of socialism or social justice. In the said judgment, this Court has taken into consideration various decisions of this Court and the Apex Court. It has been held as under:

"11. Mr. Clerk in this connection rightly invited the attention of this Court to the subsequent decision of the Apex Court in the case of Christian Medical College Hospital Employees' Union v. Christian Medical Colleges, Vellore reported in AIR 1988 SC 37. While negating the argument that application of provisions of Industrial Disputes Act to the minority institution would abridge the fundamental right of the minority educational institution the Court held that the Industrial tribunal or the Labour Court has under Section 11A of the Act powers to substitute a lesser punishment in lieu of the order of discharge/dismissal passed by the management, However, confirmation of such power is not conferring an arbitrary or absolute power in the Industrial Tribunal or Labour Court. The power under Section 11A of the Act has to be exercised judiciously and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of the Management under Section 11A of the Industrial Disputes Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or

the Labour Court has to give reasons for the satisfaction. Such reasons may not be fanciful or whimsical and they are once against subjected to judicial review by the High Court or the Supreme Court. Substitution of a punishment therefore solely on the ground that the theory of socialism or social justice requires that lenient view should be taken is untenable in law and tantamount to permitting the Labour Court or the Industrial Tribunal to act beyond the scope of Section 11A of the said Act. This Court also has considered the question of substitution or modification of penalty imposed by the disciplinary authority, and based on recent decision of the Supreme Court, this Court in the case of Vadodara Municipal Corporation Kamdar Karmachari Union v. Municipal Corporation of Vadodara and another reported in 1993(9) GLH 640 made following observations which are in tune with and consistent with the binding precedents of the Apex Court and the objective sought to be achieved by the legislature by introduction of Section 11A of the I.D.Act,1947"

` This case reminds this Court of the following observations of Chandrachud C.J. in the case of Shankardas v. Union of India reported in AIR 1985 SC 772:

`Cases which evoke sympathy come frequently before the court. But pity not often.'"

7.1 Mr. Rathod, learned Counsel for the workman on the other hand submitted that the part of the order of the Labour Court denying the back wages for the interim period to the workman is arbitrary and unjustified inasmuch as the Labour Court has failed to look into the aspect of gravity of misconduct and the harshness of the punishment keeping in mind the length of service of the workman. According to Mr. Rathod the award of the Labour Court cannot relate back from the date of dismissal.

8.1 Having considered the ratio laid down in the aforesaid two decisions cited before me by the learned Counsel for the petitioner-Management, I am of the view

that these decisions will be of no help to the petitioner-Management. It may be noted that the Labour Court has found that the misconduct proved is only to the extent of the workman having filed false complaint against his superior officer, but the Labour Court has not accepted the version of the Management with regard to the workman having disobeyed his superiors. Apart from that filing of alleged false complaint is not a misconduct which calls for penalty of dismissal.

8.2 In that view of the matter, bearing in mind the fact that the workman has been working since 24 years and that too without any stigma, I am constrained to hold that the Labour Court has unerringly exercised its powers under Section 11-A of the I.D.Act in granting reinstatement without back wages for the interim period of enforced idleness.

8.3 It is also pertinent to note that Central Bank of India's case (Supra) is with regard to a case of misappropriation but in the case on hand there is no allegation of misappropriation and the charges proved is only in respect to filing false complaint. It may be that the workman because of his poor financial condition could not prove the charges against his superior officers before the Criminal Court beyond doubt but mere filing of false complaint cannot lead to such harsh punishment of dismissal from service. It is not even the case before the Labour Court that the workman has not obeyed the order of his superiors since the allegation of disobedience made by the management is of February, 1980 while the departmental proceedings commenced only on 14th December, 1980 and the chargesheet came to be issued in to the workman as late as on April,14, 1981. There is no reason whatsoever for the management to wait till the criminal trial is over for initiating departmental proceedings against the petitioner.

9.1 Having applied the settled legal principles to factual aspects of the case as narrated above as also considering the arguments advanced by the learned Counsel for the Management, I am of the opinion that the Labour Court is perfectly justified in passing the order under challenge. No illegality is pointed out by the learned Counsel for the Management calling for my interference in these two Special Civil Applications. The claim of the respondent-workman in respect of back wages for the period from date of dismissal till the age of superannuation is disallowed.

10.1 For the foregoing reasons, both these petitions

are dismissed. Rule is discharged in each of the petitions. However, it is directed that the petitioner-Management will pay to the respondent-workman all the dues from the date of the award of the Labour Court till superannuation and also other retiral benefits as expeditiously as possible, preferably, within four months from the date of receipt of this order.

(K.S.Jhaveri,J.)
stanley-ksj.